Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Jurisdictional Separations and Referral	)	CC Docket No. 80-286
To the Federal-State Joint Board	)	
Petition by Pioneer Telephone	)	
Cooperative, Inc. For Waiver of	)	
47 C.F.R. Sections 36.3, 36.123-126,	)	
36.141, 36.152-157, 36.191 and	)	
36.372-382 to Unfreeze Part 36	)	
Category Relationships	)	

To: Chief, Wireline Competition Bureau

PETITION OF PIONEER TELEPHONE COOPERATIVE, INC. FOR WAIVER OF 47 C.F.R. SECTIONS 36.3, 36.123-126, 36.141, 36.152-157, 36.191 AND 36.372-382 TO UNFREEZE PART 36 CATEGORY RELATIONSHIPS

Pursuant to 47 C.F.R. Section 1.3 of the Commission's rules, Pioneer Telephone Cooperative, Inc. (Pioneer or the Cooperative) hereby requests a permanent waiver of 47 C.F.R. Sections 36.3, 36.123-126, 36.141, 36.152-157, 36.191 and 36.372-382 (thereinafter referred to as the Frozen Category Rules). Waiver of these rules will allow Pioneer on a prospective bases to properly allocate its costs thereby enable the Cooperative to more accurately align its cost and revenues, receive additional cost-based settlements, and reduce its reliance on support from the high-cost fund. Granting of this waiver would serve the public interest and meet the good cause standard for waiver by the Commission.

I. Background

Formed in 1953 as a member-owned telephone cooperative, Pioneer is a rural telephone company as defined in 47 USC §153(44). The Cooperative is headquartered in Kingfisher and operates in Northwest, Central and Southwest Oklahoma. Pioneer provides local and broadband services to a service area that extends approximately 10,900 square miles in 30 rural counties through 76 exchanges. The Cooperative services 4.2 customers per square mile and 8.09 customers per route mile of cable. Exhibit A of this filing lists the exchanges where Pioneer provides local and broadband services.

As of December 31, 2012, the Cooperative provided service to [redacted] residential lines of which [redacted] percent are Lifeline recipients, and [redacted] business lines for a total of 45,800 access lines. Pioneer provides broadband services primarily through the use of Digital Subscriber Line (DSL) with a total of [redacted] DSL customers.[1] Pioneer provides 256kbps services to approximately 95 percent of its service area, 3mbps to approximately 31 percent of its service area, and 6mbps to 22 percent of its service area as of December 31, 2012. Pioneer serves approximately [redacted] anchor institutions such as, municipalities, rural fire departments, public schools, county facilities, libraries, health facilities, hospitals, law enforcement agencies and many colleges. Pioneer takes seriously its responsibility to provide state-of-the-art advanced telecommunications services to its member-owned customers including broadband capabilities and interactive video services to rural schools and anchor institutions.

Pioneer has made significant investments since its inception to build and maintain its expansive network which today offers local and broadband Internet service to its customers who are predominantly families, farmers, ranchers, and small businesses. The Frozen Category Rules prevent Pioneer from properly allocating its costs to the interstate jurisdiction thereby causing the Cooperative to forego additional cost-based settlements. Approval of this requested Part 36 waiver would allow the Cooperative the ability to receive additional interstate pool settlements while at the same time reduce its high cost support funds. As discussed below, Exhibit B of this filing provides financial documentation that

[1] Currently Pioneer provides wholesale Internet service in conjunction with its wholly-owned affiliate, Pioneer Long Distance, Inc. When referenced in this petition, Internet service includes the services provided by both Pioneer and its affiliate. Effective July 1, 2013 Pioneer has elected to provide wholesale DSL services as a detariffed service.

supports our claim that Pioneer's high cost support funds would be reduced if this waiver is approved.

II. Pioneer's Waiver Petition is Justified and Meets Waiver Standards

The Commission's rules may be waived for good cause. (See 47 C.F.R. §1.3.) The Commission may grant a waiver of its rules where the requested relief would not undermine the policy objective of the rule in question and such waiver serves the public interest.[2]

A. Investments Were Made By Pioneer with the Expectation that the Freeze Would End in the Five-Year Time Period

In 2001, the Commission required all rate-of-return carriers to freeze their allocation factors and allowed these carriers the option of freezing their category relationships.[3]

When the Cooperative made its election to freeze its categories, it reasonably did not anticipate that the freeze would last for such an extended period of time – which is 12 years. The freeze was set initially to expire on June 30, 2006 or until the Commission completed comprehensive separations reform whichever came first.[4] In August 2001 Pioneer notified the National Exchange Carrier Association (NECA) of its election to freeze its category relationships. In 2006 the Commission extended the freeze for an additional three years or

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[2] *See generally, WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972); *see also Northeast Cellular* (D.C. Cir. 1990).

[3] *See Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 (2001) ("*2001 Separations Freeze Order*"). Category relationships are "the percentages of a carrier's costs for equipment and investment, recorded in Part 32 accounts, that are assigned to various Part 36 categories based on how the equipment or investment in that category is being used." *In the Matter of Petition by Gila River Telecommunications, Inc. Pursuant to 47 C.F.R. Sections 36.3, 36.123-126, 36.152-157, and 36.372-382 for Commission Approval to Unfreeze Part 36 Category Relationships*, CC Docket No. 80-286, Order, FCC 10-199 (rel. Dec. 2, 2010) at n.7.

[4] *See 2001 Separations Freeze Order* at para 9.

until the Commission completed comprehensive separations reform whichever came first and then continued to extend the freeze for one year intervals with the most recent decision extending the freeze until June 30, 2012.[5]

During this period of time where the separations factors remained frozen, request from customers for telecom and broadband services has continued to increase and Pioneer has continued to invest in expanding and upgrading its network. During this 12 year period, Pioneer has invested $[redacted] million, to provide both voice and broadband services to its member-customers.

B. Allowing Pioneer to Unfreeze Frozen Categories under These Circumstances Constitutes "Good Cause" and is within the Public Interest

While making these investments, Pioneer has not properly assigned its costs related to broadband deployment and provision of special access, particularly wideband circuits due to the Frozen Category Rules. In its *2009 Separations Freeze Extension Order*, the Commission recognized that companies made their decision for "administrative convenience, expecting that when they were ready to undertake new investment after the end of the five-year freeze, they would be allowed to allocate the investment to the appropriate categories."[6] The Commission recognized the Frozen Category Rules should be addressed and asked the Federal-State Joint Board on Jurisdictional Separations (Joint Board on Separations) to consider "allowing carriers a one-time opportunity to freeze or unfreeze

[5] *See Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 09-44 (rel. May 15, 2009) ("*2009 Separations Freeze Extension Order*"); *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 10-89 (rel. May 25, 2010); *Jurisdictional Separations Reform and Referral to the Federal-State Joint Board*, CC Docket No. 80-286, Report and Order, FCC 11-71 (rel. May 4, 2011).

[6] *2009 Separations Freeze Extension Order* at para. 19.

category relationships is warranted under the circumstances."[7] On March 5, 2010, the state members of the Joint Board on Separations submitted a Proposal to the full Joint Board on Separations recommending an interim adjustment of separations allocation factors and category relationships pending comprehensive reform.[8] The Proposal at Part I addressed the "cost-revenue mismatch" for carriers that froze their category relationships because these carriers "have not directly assigned their interstate special access investment during the freeze."[9] According to the states' Proposal, the cost studies which the category relationships were based "is governed by separations studies that are nine years old" and "are unlikely to reflect current conditions" and thus "no longer have any basis in fact." [10] Even though no action has been taken on the Proposal, it is evident that both the Commission and the Joint Board on Separations believe it is important that the cost-revenue mismatch caused by the freeze of category relationships should be addressed. Grant of this waiver would allow Pioneer to properly allocate its costs enabling the Cooperative to more accurately align its costs and revenues and receive additional cost-based settlements while at the same time reduce its support from the high-cost fund.

Grant of this waiver would allow Pioneer to allocate more of its costs to the interstate jurisdiction which would allow the Cooperative to receive additional cost-based settlements that would come from interstate pool settlements - not from the high-cost loop fund. Granting of this waiver would not burden the high-cost loop fund in any manner. Using the

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[7] *Id.*

[8] *See* Letter from Steve Kolbeck, State Chairman, Federal-State Joint Board on Jurisdictional Separations, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 80-286 (Mar. 5, 2010) ("Proposal").

[9] *Id.* at p. 5.

[10] Proposal at 2-3.

current NACPL of $535.11, Pioneer does not qualify for High Cost Loop Support with the frozen or unfrozen categories. Granting the waiver would, however, decrease Pioneer's draw on the ICLS and CAF High Cost Funds.

Based on 2011 cost data, as shown in Exhibit B, Page 3 of 4[11], Pioneer estimates that if the Commission grants this waiver, the proportion of net investment allocated to the intrastate jurisdiction would decrease while net investment allocated to the interstate jurisdiction would increase resulting in a shift of 9 percent of net investment to interstate. Similarly, Pioneer estimates that the proportion of expenses allocated to the intrastate jurisdiction would decrease while expenses allocated to the interstate jurisdiction would increase resulting in a shift of 6 percent to the interstate jurisdiction. As shown in Exhibit B, Page 3 of 4, this shift in cost allocation would result in Pioneer receiving $[redacted] in additional cost-based settlements.

As shown on Exhibit B, Page 3 of 4, using 2011 cost data the costs related to Special Access and DSL causes a shift in costs to the interstate jurisdiction if the Commission were to grant this waiver allowing Pioneer to unfreeze its frozen categories. As shown in Exhibit B, Page 3 of 4, when categories are unfrozen, the Special Access Revenue Requirement increases by $[redacted] and the DSL Revenue Requirement increases by $[redacted] while the Common Line Revenue Requirement, recovered as ICLS, decreases by $[redacted] and the Switched Access Revenue Requirement, recovered as CAF, decreases by $[redacted]. The largest proportion of the additional settlements would come from the NECA interstate traffic sensitive pool settlements. As shown in Exhibit B, Page 4 of 4, using 2011 data, the frozen Special Access Revenue Requirement is $[redacted] while Special Access Revenues

[11] Although not referenced in this filing however included for review, is Exhibit B, Page 1 & 2, which represents the Central Office Equipment and Cable and Wire investment impacts if this waiver is granted.

billed using NECA's prescribed rate band, which is one of the lowest rate bands, is $[redacted] and the frozen DSL Revenue Requirement is $[redacted] while DSL Revenues billed using NECA's prescribed rate band is $[redacted]. Granting this waiver will allow Pioneer to more appropriately align their costs and revenues to their revenue requirements.

III. Costs Are Not Being Recovered from the State Universal Service Fund

As explained above, due to the operation of the Frozen Category Rules, costs that should have been allocated to the interstate jurisdiction have been allocated to the state jurisdiction. Although allocated to the intrastate jurisdiction, Pioneer is not able to recover these investments from a state universal service fund. Pioneer will not be able to recover these costs unless this waiver is granted.

IV. Action on Pioneer's Petition Should Not be Delayed Pending Joint Board Action

According to a recent *ex parte* notice by a rural telephone company that has filed a similar petition, the Bureau does not intend to act on petitions to unfreeze Part 36 category relationships until the Separations Joint Board has issued a recommendation regarding "global" separations issues.[12] Pioneer recognizes the Commission has broad discretion to order its proceedings, and that in many circumstances action by rulemaking is preferable to case-by-case determination. However, in the context of: (1) the fact that Pioneer made the elections to freeze its category relationships 12 years ago in reasonable reliance on the expectation that freeze would last only five years; (2) the very rapid changes in telecommunications technology, markets and economics that create very different circumstances from those existing when the election was made; (3) the history of repeated

[12] Letter from Dick Segress, President, Terral Telephone Company to Chairman Genachowski, March 8, 2013, CC Doc. No. 80-286.

extensions of the freeze with no reason to believe that a Joint Board recommendation will be forthcoming anytime soon or that it would even address the issues raised by Pioneer's Petition; and (4) presumably, even if the Joint Board did issue a recommendation within a reasonable time, it would still require Commission action approving the recommendation before the Bureau could act upon it.

Pioneer recognizes that any action on its Petition could be subject to further changes in the separations rules, but requests prompt action in order to mitigate that continuing ill effects of the current outdated freeze.

V. Conclusion

As supported above, good cause exists for grant of this waiver and grant would advance the public interest. Specifically, grant of this waiver allows Pioneer to properly align its costs enabling the Cooperative to receive additional cost-based settlements and not harm the interstate high cost fund. The additional settlements would be used by Pioneer to continue to expand and upgrade its network and enhance broadband service to its customers, anchor institutions and other providers that rely on a robust voice and broadband network.

Respectfully submitted

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Attachment A,

Attachments B & C redacted

March 20, 2013